

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

STEVE COOLEY §
§
V. § CIVIL ACTION NO. G-06-234
§
CITY OF TEXAS CITY, TEXAS, ET AL. §

OPINION AND ORDER

Before the Court is the “Motion to Abate Trial Proceedings” of Defendants City of Texas City and Gerald Grimm; the Motion seeks abatement of the Jury Trial now set for March 26, 2007, pending the determination of Grimm’s appeal.

On March 14, 2007, Grimm filed a “Notice of Appeal” in an effort to challenge this Court’s denial of his pre-trial claim of qualified immunity entitlement. This Court must agree with the Movants that Cooley’s cause of action against the City is inextricably intertwined with his First Amendment claim against Grimm. However, this Court disagrees that Mitchell v. Forsyth, 472 U.S. 511 (1985), authorizes Grimm’s interlocutory appeal. Rather, this Court remains convinced that the necessary determination of Grimms’ true motivation for bypassing Cooley presents a genuine issue of material fact which deprives the Court of Appeals of jurisdiction to consider Grimms’ interlocutory appeal. See Johnson v. Jones, 515 U.S. 304, 319-320 (1995), see also Shinault v. Cleveland County Board of County Commissioners, 82 F.3d 367, 370 (10th Cir. 1986) (An examination of Skinner’s motive for firing Shinault, allegedly for political patronage reasons, is “just the sort of nebulous factual assessment that *Johnson* leaves to the District Courts.”) Nevertheless, the Court is faced with the fact that Grimm has set the appellate process in motion, thereby precluding, at least at this time, the trial of Cooley’s claim against him. Since this Court

has no desire to try this case twice, it will **GRANT** the Defendant's Motion to Abate (Instrument no. 45) and await the decision of the United States Court of Appeals.

It is, therefore, **ORDERED** that all further proceedings in this case are **ABATED** until thirty (30) days following the final disposition of the Interlocutory Appeal of Defendant Gerald Grimm.

DONE at Galveston, Texas, this 16th day of March, 2007.



John R. Froeschner
United States Magistrate Judge